



JUDICIAL REVIEW

Rights Emergencies And Judicial Review

**Juan F. Gonzalez-Bertomeu, Roberto
Gargarella**



Rights Emergencies And Judicial Review:

Rights, Emergencies and Judicial Review Imtiaz Omar, 2023-07-03 This book makes a significant contribution to the understanding of issues of comparative constitutionalism in emergent politics Recurrent states of emergency in Malaysia Sri Lanka and Bangladesh provide the background for a comparative examination of constitutional emergency powers individual rights and judicial review This work examines the extent to which the Court in these countries has performed its expected role identifies problems in approaches to interpretation which have been adopted and suggests alternatives to constitutional interpretation and judicial review The alternatives explored are drawn from contemporary western jurisprudence including those of Ronald Dworkin and writers of the Critical Legal Studies tradition The juxtaposition of western jurisprudential development to issues of constitutionalism in the countries under survey is a bold attempt to seek some common ground in conceptualizing rights and techniques of juristic interpretation in western and eastern legal cultures The theoretical framework of the study is well perceived the arguments convincing This carefully researched work makes a valuable and scholarly contribution to the study of comparative constitutional law and jurisprudence

Rights, Emergencies and Judicial Review Kazi Imtiaz Nazr Omar, 1992 *Emergency Powers in Asia* Victor V. Ramraj, Arun K. Thiruvengadam, 2010 What role does and should legal political and constitutional norms play in constraining emergency powers in Asia and beyond

Emergency Powers and the Courts in India and Pakistan Imtiaz Omar, 2021-10-18 The fundamental premise of this study is that where Constitutions such as that of India and Pakistan articulate legal norms which limit the scope of the executive power to derogate from individual rights during states of emergency there must likewise exist an effective control mechanism to ensure that the Executive acts within the scope of that power Viewed from this perspective the judicial power to interpret the Constitution imposes upon the Court the constitutional duty to provide adequate safeguards against the abuse of state power affecting individual rights This power remains available notwithstanding the presumed or purported ouster of judicial review The concept of judicial review as a source of control is examined in the light of the experience of Pakistan and India during periods of constitutional emergency The divergent approaches of the Courts in these countries in litigation concerning emergency powers and individual rights are explained in terms of divergent views that these Courts have adopted with respect to the nature of judicial review

Rights, Emergencies, and Judicial Review Imtiaz Omar, 1996-04-24 This book makes a significant contribution to the understanding of issues of comparative constitutionalism in emergent politics Recurrent states of emergency in Malaysia Sri Lanka and Bangladesh provide the background for a comparative examination of constitutional emergency powers individual rights and judicial review This work examines the extent to which the Court in these countries has performed its expected role identifies problems in approaches to interpretation which have been adopted and suggests alternatives to constitutional interpretation and judicial review The alternatives explored are drawn from contemporary western jurisprudence including those of Ronald Dworkin and writers of

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States of Emergency and Human Rights Protection Monika Florczak-Wątor, Fruzsina Gárdos-Orosz, Jan Malíř, Max Steuer, 2024-02-13 Emergencies are ubiquitous in 21st century societal discourses From the rise of emergency pronouncements in the United States since 9 11 accompanied by the associated violations of fundamental rights through talks of crises in the EU in relation to the economy Putin s occupation of Crimea as recently amplified by the full scale invasion of Ukraine or refugees to the long neglected looming climate catastrophe emergency discourses have been catapulted to the centre of attention by the critical juncture of the COVID 19 pandemic This volume presents and compares the existing regulations and practices of emergencies and human rights protection in the Visegrad V4 countries As such the analysis covers Czech Republic Hungary Poland and Slovakia Although these European countries share a common historical experience and are now members of the EU and NATO they differ in some of their constitutional traditions and also in the dynamics of their political regimes Divided into three parts the first two comprehensively discuss the constitutional models of emergency and human rights protection in each of the V4 countries while the third part illustrates how these models and the general framework of rights protection materialised in the limitations of the selected human rights during the COVID 19 pandemic The volume provides a compass for more in depth comparative and interdisciplinary inquiries into the forms and practices of emergencies in one of the EU regions that faces illiberalisation and the consequences of the ongoing invasion of Ukraine by the Russian Federation on its eastern borders It will be a valuable resource for academics researchers and policymakers working in the areas of Constitutional Law and Politics The Introduction Chapter 7 and Chapter 10 of this book are freely available as a downloadable Open Access PDF at <http://www.taylorfrancis.com> under a Creative Commons Attribution Non Commercial No Derivatives CC BY NC ND 4 0 license

Necessity and National Emergency Clauses Diane A. Desierto, 2012-01-05 Unveiling the complex dynamic between State sovereignty and necessity doctrine as historically practiced in international political relations this book proposes analytical criteria to assess the lawfulness and legitimacy of interpretations of necessity and national emergency clauses in specialized treaty regimes

Judicial Activism in Bangladesh Ridwanul Hoque, 2011-01-18 This book critically examines the evolving global trend of judicial activism with particular reference to Bangladesh It constructs judicial activism as a golden mean adjudicative technology standing between excessive judicial assertion and unacceptable judicial passivity that may leave injustices un redressed It argues that judicial balancing between over activism and meek administration of justice should essentially be predicated upon domestic conditions and the needs and fundamental public values of the judges

respective society Providing cross jurisdictional empirical evidence the study demonstrates that judicial activism steered towards improving justice and grounded in one s societal specificities can be exercised in a morally and legally legitimate form and without rupturing the balance of powers among the state organs This study has sought to displace the myth of judicial activism as constitutional transgression by unelected judges arguing that judicial activism is quite different from excessivism It is argued and shown that a particular judge or judiciary turns out to be activist when other public functionaries avoid or breach their constitutional responsibilities and thus generate injustice and inequality The study treats judicial activism as the conscientious exposition of constitutional norms and enforcement of public duties of those in positions of power The study assesses whether Bangladeshi judges have been striking the correct balance between over activism and injudicious passivity Broadly the present book reveals judicial under activism in Bangladesh and offers insights into causes for this It is argued that the existing milieu of socio political injustices and over balance of constitutional powers in Bangladesh calls for increased judicial intervention and guidance of course in a balanced and pragmatic manner which is critical for good governance and social justice Writing about judicial activism easily gets shackled by fussy and pedestrian debates about what judges may or may not do as unelected agents of governance The book goes much beyond such reductionist pedestrianisation of law for it courageously lifts the debate into the skies of global legal realism The analysis perceptively addresses bottlenecks of justice identifying shackles and mental blocks in our own minds against activist concerns for justice for the common citizen Prof Werner Menski Foreword

Permanent States of Emergency and the Rule of Law Alan Greene,2018-04-05 Permanent States of Emergency and the Rule of Law explores the impact that oxymoronic permanent states of emergency have on the validity and effectiveness of constitutional norms and ultimately constituent power It challenges the idea that many constitutional orders are facing permanent states of emergency due to the objective nature of threats facing modern states today arguing instead that the nature of a threat depends upon the subjective assessment of the decision maker In light of this it further argues that robust judicial scrutiny and review of these decisions is required to ensure that the temporariness of the emergency is a legal question and that the validity of constitutional norms is not undermined by their perpetual suspension It does this by way of a narrower conception of the rule of law than standard accounts in favour of judicial review of emergency powers in the literature which tend to be based on the normative value of human rights In so doing it seeks to refute the fundamental constitutional challenge posed by Carl Schmitt that all state power cannot be constrained by law

Law and Morality David Dyzenhaus,Sophia Reibetanz Moreau,Arthur Ripstein,2007-01-01 Since its first publication in 1996 Law and Morality has filled a long standing need for a contemporary Canadian textbook in the philosophy of law Now in its third edition this anthology has been thoroughly revised and updated and includes new chapters on equality judicial review and terrorism and the rule of law The volume begins with essays that explore general questions about morality and law surveying the traditional literature on legal positivism and contemporary

debates about the connection between law and morality These essays explore the tensions between law as a protector of individual liberty and as a tool of democratic self rule and introduce debates about adjudication and the contribution of feminist approaches to the philosophy of law New material on the Chinese Canadian head tax case is also featured The second part of Law and Morality deals with philosophical questions as they apply to contemporary issues Excerpts from judicial decisions as well as essays by practicing lawyers are included to provide theoretically informed legal analyses of the issues Striking a balance between practical and more analytic philosophical approaches the volume s treatment of the philosophy of law as a branch of political philosophy enables students to understand law in its function as a social institution Law and Morality has proved to be an essential text in both departments of philosophy and faculties of law and this latest edition brings the debates fully up to date filling gaps in the previous editions and adding to the array of contemporary issues previously covered

Comparative Constitutional Law in Asia Rosalind Dixon,Tim Ginsburg,2014-02-28 Comparative constitutional law is a field of increasing importance around the world but much of the literature is focused on Europe North America and English speaking jurisdictions The importance of Asia for the broader field is demonstrated here i

Promoting Peace Through International Law Cecilia Bailliet,Kjetil Mujezinović Larsen,2015 This book considers the liberal conception of peace within Western philosophy and the principle of peaceful coexistence supported in the East It investigates there is a right to peace by tracing the evolution of the international law of peace through its historical and philosophical origins

Emergencies in Public Law Karin Loevy,2016-03-11 Debates about emergency powers traditionally focus on whether law can or should constrain officials in emergencies Emergencies in Public Law moves beyond this narrow lens focusing instead on how law structures the response to emergencies and what kind of legal and political dynamics this relation gives rise to Drawing on empirical studies from a variety of emergencies institutional actors and jurisdictional scales terrorist threats natural disasters economic crises and more this book provides a framework for understanding emergencies as long term processes rather than ad hoc events and as opportunities for legal and institutional productivity rather than occasions for the suspension of law and the centralization of response powers The analysis offered here will be of interest to academics and students of legal political and constitutional theory as well as to public lawyers and social scientists

The Latin American Casebook Juan F. Gonzalez-Bertomeu,Roberto Gargarella,2016-04-20 Traditionally relegated because of political pressure and public expectations courts in Latin America are increasingly asserting a stronger role in public and political discussions This casebook takes account of this phenomenon by offering a rigorous and up to date discussion of constitutional adjudication in Latin America in recent decades Bringing to the forefront the development of constitutional law by Latin American courts in various subject matters the volume aims to highlight a host of creative arguments and solutions that judges in the region have offered The authors review and discuss innovative case law in light of the countries social political and legal context Each chapter is devoted to a discussion of a particular area of judicial review from freedom of

expression to social and economic rights from the internalization of human rights law to judicial checks on the economy from gender and reproductive rights to transitional justice The book thus provides a very useful tool to scholars students and litigants alike

STATE OF EMERGENCY MEASURES WITHIN THE CONTEXT OF LAW AND HUMAN RIGHTS Dr. Ufuk YEŞİL, With the decree laws adopted under state of emergency declared following the coup attempt on 15 July 2016 more than 125 thousand people have been dismissed their professions and more than three thousand organizations and institution have been closed down As a grounds for the measures adopted for natural and real persons it is shown that those who are considered to have relation connection or contact with terrorist organizations or structure entities organizations or groups established as engaging in activities against the national security of the State by the National Security Council which has no judicial duty whose resolutions are of advisory nature for the Council of Ministers which issues emergency decree laws However the concepts of connection and contact mentioned in the said justification are of intelligence nature concepts which were not previously available in our law and which have no meaning or equivalent in terms of criminal and disciplinary law In other words without the need for any court decision with the decision of an administrative board structures groups and formations which were not mentioned in the Decree Laws have been considered to be a terrorist organization and the persons who are alleged to have connection and contact with these organizations have been deemed to be a member of a terrorist organization But this admission is contrary to the principle that the administration cannot impose criminal offences through regulatory procedures which is set forth in Article 22 of the Turkish Penal Code and presumption of innocence Furthermore persons in question have not been notified which terrorist organization they are a member with their defence statement has not been obtained in spite of the grave allegation against them and they have been dismissed their profession by putting their names in the lists that were not clear by whom and according to which criteria they are prepared Foregoing emergency procedures and measures are required to be assessed in terms of fundamental rights and freedom as well as universal law criterion in order to meet this need the study herein touches upon the law practices in Turkey administered by the state of emergency The topics covered in the study were examined in six chapters In the first chapter it is touched upon the legality of the emergency decree laws and the role of the Turkish Constitutional Court played in the course of the State of Emergency in the second chapter it is reviewed the compatibility with the European Convention on Human Rights of the dismissal decisions in particular on the judges and prosecutors in the third chapter the assessment of the detention decision on in particular judges and prosecutors within the context of the right to liberty and security was tackled in the fourth chapter it is dealt with if the Inquiry Commission on the State of Emergency Measures is considered as an effective domestic remedy in the fifth chapter it is examined compatibility of the prison uniform with the European Convention on Human Rights and the sixth and last chapter covers the assessments on the Constitutional amendments related to the judiciary made on 16 April 2017 I d like to take this opportunity to thank my wife and daughters for their patience love and support in this

process and I hereby wish the book would be useful to the legal community and those who are interested in the issue

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Human and Peoples Rights and African Court of Justice and Human rights 2008 *The Constitution of the Environmental Emergency* Jocelyn Stacey, 2018-04-19 This book argues for a reframing of environmental law It starts from the premise that all environmental issues confront lawmakers as emergencies Environmental issues pose a fundamental challenge to law because it is impossible to reliably predict which issues contain the possibility of an emergency and what to do in response to such an unforeseen event These features undermine the conventional understanding of the rule of law This book argues that approaching environmental issues from the emergency perspective leads us to an understanding of the rule of law that requires public justification This requirement recentres the debates in environmental law around the question of why governance under the rule of law is something worth having in the environmental context It elaborates what the rule of law requires of decision makers in light of our ever present vulnerability to catastrophic environmental harm Controversial compelling and above all timely this book presents an important new perspective on environmental law **Terrorism and the Limitation of Rights**

Stefan Sottiaux, 2008-02-29 Taking as a starting point the widely accepted view that states confronted with terrorism must find a proper equilibrium between their respective obligations of preserving fundamental rights and fighting terrorism effectively this book seeks to demonstrate how the design and enforcement of a human rights instrument may influence the result of that exercise An attempt is made to answer the question how a legal order's approach to the limitation of rights may shape decision making trade offs between the demands of liberty and the need to guarantee individual and collective security In doing so special attention is given to the difference between the adjudicative methods of balancing and categorisation The book challenges the conventional wisdom that individual rights in times of crisis are better served by the application of categorical rather than flexible models of limitation In addition the work considers the impact of a variety of other factors including the discrepancies in enforcing an international convention as opposed to a national constitution and the use of emergency provisions permitting derogations from human rights obligations in time of war or a public emergency The research questions are addressed through a comparative study of the terrorism related restrictions on five fundamental rights protected under the European Convention on Human Rights and the United States Constitution the right to freedom of expression the right to freedom of association the right to personal liberty the right to privacy and the right to a fair trial The book offers both a theoretical account of the paradoxical relationship between terrorism and human rights and a comprehensive comparative survey of the major decisions of the highest courts on both sides of the Atlantic

Human Rights Prosecutions in Democracies at War Moira Lynch, 2018-09-17 Though many of the longest and most devastating internal armed conflicts have been fought within the boundaries of democratic states these countries employ some of the highest numbers of human rights prosecutions What conditions prompt this outcome and what explains the variable patterns of prosecutions in democracies at war Prosecutions may be enabled by existing democratic norms and institutions but given their role in a violent conflict democratic governments may go to great lengths to avoid judicial

accountability Through qualitative and quantitative research of four cases Sri Lanka Northern Ireland Spain and Colombia this book argues that emergency and anti terrorism laws issued during the conflict created barriers to the investigation and prosecution of state human rights violations The extent to which state actors were held accountable was shaped by citizens NGOs and political actors who challenged or upheld impunity provisions within emergency legislation Israel Yearbook on Human Rights, Volume 33 (2003) Yoram Dinstein, Fania Domb, 2004-04-01 The Israel Yearbook on Human Rights an annual published under the auspices of the Faculty of Law of Tel Aviv University since 1971 is devoted to publishing studies by distinguished scholars in Israel and other countries on human rights in peace and war with particular emphasis on problems relevant to the State of Israel and the Jewish people The Yearbook also incorporates documentary materials relating to Israel and the Administered Areas which are not otherwise available in English including summaries of judicial decisions compilations of legislative enactments and military proclamations The Articles section of Volume 33 contains articles on Legal Aspects of Emergency Regimes

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